

# EXHIBIT 6

NOTICE OF DEPOSITION BY WRITTEN  
QUESTIONS TO VANDERBILT  
MEDICAL GROUP CLINIC PHARMACY

**Blumberg & Wolk, LLC**

158 Delaware Street  
P.O. Box 68  
Woodbury, NJ 08096  
(856) 848-7472

*Counsel for Defendants Premier Orthopaedic and Sports Medicine Associates of Southern New Jersey, LLC, trading as Premier Orthopaedic Associates, Premier Orthopaedic Associates Surgical Center, LLC, Kimberly Yvette Smith, M.D., a/k/a Kimberly Yvette Smith-Martin, M.D., Thomas Dwyer, M.D., Rhaul Shah, M.D., John Catalano, M.D., Richard C. DiVerniero, M.D., and Richard Strauss, M.D.*

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

IN RE: NEW ENGLAND COMPOUNDING  
PHARMACY, INC. PRODUCTS LIABILITY  
LITIGATION

THIS DOCUMENT RELATES TO:  
  
ALL CASES

MDL No. 2419  
Docket No. 1:13-md-2419 (RWZ)

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**NOTICE OF 30(B)(6) DEPOSITION BY WRITTEN QUESTIONS**

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Defendants Premier Orthopedic and Sports Medicine Associates of Southern New Jersey, LLC, trading as Premier Orthopedic Associates, Premier Orthopedic Associates Surgical Center, LLC, Kimberly Yvette Smith-Martin, M.D., Thomas Dwyer, M.D., Rahul Shah, M.D., Dr. Richard C. DiVerniero, M.D. (Hereinafter “The Premier Defendants” or “Premier”), pursuant to Fed. R. Civ. P. 31 and 30(b)(6), come now and give notice that the deposition of Vanderbilt Medical Group Clinic Pharmacy, as an organization, will be taken by written questions.

Pursuant to Fed. R. Civ. P. 30(b)(6) and 31(a)(4), Vanderbilt Medical Group Clinic Pharmacy shall designate a witness to testify regarding the written questions included with this notice, and any cross questions, redirect questions, or recross questions submitted in accordance with Fed. R. Civ. P. 31(a)(5).

The deponent will testify before a court reporter from Discovery Litigation Services at a time and place convenient for the witness but not to occur less than 30 days after service of this notice and the accompanying questions (to permit parties time to submit cross, redirect, and recross questions), or after November 15, 2015. The deposition will be recorded by stenographical means.

Respectfully submitted,

**Blumberg & Wolk, LLC**  
158 Delaware Street  
P.O. Box 68  
Woodbury New Jersey 08096  
(856) 848-7472  
cwalk@blumberglawoffices.com

/s/ Christopher M. Wolk  
Christopher M. Wolk, Esq.

Attorneys for Premier Orthopaedic and Sports  
Medicine Associates of Southern New Jersey, LLC,  
trading as Premier Orthopaedic Associates, Premier  
Orthopaedic Associates Surgical Center, LLC,  
Kimberly Yvette Smith, M.D., a/k/a Kimberly  
Yvette Smith-Martin, M.D., Thomas Dwyer, M.D.,  
Richard C. DiVerniero, M.D., and Richard Strauss,  
M.D.

**CERTIFICATION**

I certify that in submitting this *NOTICE OF DEPOSITION BY WRITTEN QUESTIONS*, I caused a copy of the above to be filed electronically via the Court's electronic filing system. Those attorneys who are registered with the Court's electronic filing system may access these filings through the Court's System, and notice of these filings will be sent to these parties by operation of the Court's electronic filing system. A copy of the document will also be served by U.S. Mail and Hand Delivery to Vanderbilt Medical Group Clinic Pharmacy, 1211 Medical Center Drive, TVC 1815, Nashville, TN 37232

Dated: October 12, 2015

/s/ Christopher M. Wolk  
Christopher M. Wolk, Esq.

AO 88A (Rev. 02/14) Subpoena to Testify at a Deposition in a Civil Action

## UNITED STATES DISTRICT COURT

for the

District of Massachusetts

In Re: New England Compounding Pharmacy, Inc.

*Plaintiff*

v.

*Defendant*

Civil Action No. 1:13-md-02419-RWZ

## SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Vanderbilt Medical Group Clinic Pharmacy

(Name of person to whom this subpoena is directed)

☒ **Testimony:** **YOU ARE COMMANDED** to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Place: 1211 Medical Center Drive, TVC 1815  
Nashville, TN 37232

Date and Time:

11/15/2015 8:00 am

The deposition will be recorded by this method: Stenographical means and by video

☐ **Production:** You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 10/12/2015

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Premier Defendants

, who issues or requests this subpoena, are:  
Christopher Wolk; 158 Delaware St., P.O. Box 68, Woodbury, NJ 08096; cwolk@blumberglawoffices.com; (856) 848-7472

## Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

AO 88A (Rev. 02/14) Subpoena to Testify at a Deposition in a Civil Action (Page 2)

Civil Action No. 1:13-md-02419-RWZ

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

I received this subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
on *(date)* \_\_\_\_\_.

☐ I served the subpoena by delivering a copy to the named individual as follows: \_\_\_\_\_

\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the subpoena unexecuted because: \_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of  
\$ 40.00 .

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_  
\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc.:

**Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)****(c) Place of Compliance.**

**(1) For a Trial, Hearing, or Deposition.** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
  - (ii) is commanded to attend a trial and would not incur substantial expense.

**(2) For Other Discovery.** A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

**(d) Protecting a Person Subject to a Subpoena; Enforcement.**

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

**(e) Duties in Responding to a Subpoena.**

**(1) Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

**(2) Claiming Privilege or Protection.**

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(g) Contempt.**

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

**Blumberg & Wolk, LLC**

158 Delaware Street  
P.O. Box 68  
Woodbury, NJ 08096  
(856) 848-7472

*Counsel for Defendants Premier Orthopaedic and Sports Medicine Associates of Southern New Jersey, LLC, trading as Premier Orthopaedic Associates, Premier Orthopaedic Associates Surgical Center, LLC, Kimberly Yvette Smith, M.D., a/k/a Kimberly Yvette Smith-Martin, M.D., Thomas Dwyer, M.D., Rhaul Shah, M.D., John Catalano, M.D., Richard C. DiVerniero, M.D., and Richard Strauss, M.D.*

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

IN RE: NEW ENGLAND COMPOUNDING  
PHARMACY, INC. PRODUCTS LIABILITY  
LITIGATION

THIS DOCUMENT RELATES TO:

ALL CASES

MDL No. 2419

Docket No. 1:13-md-2419 (RWZ)

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**DEPOSITION BY WRITTEN QUESTIONS OF VANDERBILT MEDICAL GROUP  
CLINIC PHARMACY**

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Pursuant to Fed. R. Civ. P. 31, Premier Orthopedic Associates, Premier Orthopedic Associates Surgical Center, LLC, Kimberly Yvette Smith-Martin, M.D., Thomas Dwyer, M.D., Rahul Shah, M.D., Dr. Richard C. DiVerniero, M.D., (hereinafter “The Premier Defendants” or “Premier”) hereby submit the following questions to Vanderbilt Medical Group Clinic Pharmacy, to be answered by one or more individuals with knowledge of Vanderbilt Medical Group Clinic Pharmacy’s medication purchasing practices (and, specifically, its purchases from New England Compounding Center (“NECC”)), to be designated by Vanderbilt Medical Group Clinic Pharmacy in accordance with Fed. R. Civ. P. 30(b)(6).



**Background**

1. Please state your name.
2. Please provide your complete address and phone number with area code.
3. Do you work at Vanderbilt Medical Group Clinic Pharmacy? If so<sup>1</sup>:
  - a. What is your current position?
  - b. How long have you held that position?
  - c. Please describe your job duties at Vanderbilt Medical Group Clinic Pharmacy.
4. Please provide a brief summary of your educational and employment background, leading up to your present position at Vanderbilt Medical Group Clinic Pharmacy.
5. Please provide a general description of your facility (*e.g.*, type of practice, number of physicians, *etc.*).
6. By virtue of your role at Vanderbilt Medical Group Clinic Pharmacy, are you familiar with Vanderbilt Medical Group Clinic Pharmacy's medication purchasing practices?
7. Please describe the basis for your familiarity with Vanderbilt Medical Group Clinic Pharmacy's medication purchasing practices (*e.g.*, is it from personal knowledge? have you spoken with persons at Vanderbilt Medical Group Clinic Pharmacy or reviewed documents?).

**Purchases from NECC and actions prior to purchase**

8. For the years 2010 through 2012, did Vanderbilt Medical Group Clinic Pharmacy purchase medications offered for sale by Medical Sales Management and/or New England Compounding Center and made by the New England Compounding Center (hereinafter "NECC")?
9. Please describe the timeframes that Vanderbilt Medical Group Clinic Pharmacy purchased medications from NECC and what medications were purchased.
10. Prior to purchasing medications from NECC, did a representative of Vanderbilt Medical Group Clinic Pharmacy perform an in-person inspection of NECC's compounding facility? If so, please (1) state when, (2) describe what was done and what was found, and (3) state whether, following the inspection, Vanderbilt Medical Group Clinic Pharmacy purchased medications from NECC.

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<sup>1</sup> If not, please state your employer, position, and job duties.

11. Prior to purchasing medications from NECC, did Vanderbilt Medical Group Clinic Pharmacy conduct research into whether NECC had recalled any medications made by NECC? If so, please (1) describe the research conducted, (2) describe the results, and (3) state whether, following the drug recall research, Vanderbilt Medical Group Clinic Pharmacy purchased medications from NECC.
12. Prior to purchasing medications from NECC, did Vanderbilt Medical Group Clinic Pharmacy conduct research into whether NECC had ever been named as a defendant in a products liability lawsuit? If so, please (1) describe the research conducted, (2) describe the results, and (3) state whether, following the previous lawsuit research, Vanderbilt Medical Group Clinic Pharmacy purchased medications from NECC.
13. Prior to purchasing medications from NECC, did Vanderbilt Medical Group Clinic Pharmacy request information from the Massachusetts Board of Registration in Pharmacy (the "Board") about previous disciplinary actions taken by the Board against NECC? If so, please (1) describe what information was provided by the Massachusetts Board of Registration in Pharmacy and (2) state whether, following the request, Vanderbilt Medical Group Clinic Pharmacy purchased medications from NECC.
14. Prior to purchasing medications from NECC, did Vanderbilt Medical Group Clinic Pharmacy submit a Freedom of Information Act request to the FDA for documentation of disciplinary actions and/or warnings issued to NECC by the FDA? If so, please (1) describe what information was provided by the FDA and (2) state whether, following the request, Vanderbilt Medical Group Clinic Pharmacy purchased medications from NECC.
15. Prior to purchasing medications from NECC, did Vanderbilt Medical Group Clinic Pharmacy search the FDA website for information about NECC? If so, please (1) describe what information was obtained from the FDA website and (2) state whether, following the request, Vanderbilt Medical Group Clinic Pharmacy purchased medications from NECC.
16. Prior to purchasing medications from NECC, did Vanderbilt Medical Group Clinic Pharmacy review transcripts from or summaries of any U.S. Congressional hearings on compounding pharmacies? If so, following the review, did Vanderbilt Medical Group Clinic Pharmacy purchase medications from NECC?
17. At the time of Vanderbilt Medical Group Clinic Pharmacy's purchases from NECC, did Vanderbilt Medical Group Clinic Pharmacy have a policy and/or procedure in place prohibiting purchases from compounding pharmacies?
18. Please describe any representations Medical Sales Management and/or NECC made to Vanderbilt Medical Group Clinic Pharmacy prior to Vanderbilt Medical Group Clinic Pharmacy purchasing medications from NECC.

19. In deciding to purchase medications from NECC, did Vanderbilt Medical Group Clinic Pharmacy take into consideration any representations from Medical Sales Management and/or NECC regarding its ability to provide a consistent supply of safe medications?
20. Prior to purchasing from NECC, did Vanderbilt Medical Group Clinic Pharmacy research compounding pharmacies in CDC literature, *USA Today*, FDA literature, or on YouTube? If so, please (1) describe the research and (2) state whether, following the research, Vanderbilt Medical Group Clinic Pharmacy purchased medications from NECC.
21. To the best of your knowledge, did any of Vanderbilt Medical Group Clinic Pharmacy's patients experience an injury as a result of Vanderbilt Medical Group Clinic Pharmacy's purchase, and use, of medications from NECC which were administered to Vanderbilt Medical Group Clinic Pharmacy's patients?

Respectfully submitted,

**Blumberg & Wolk, LLC**

158 Delaware Street

P.O. Box 68

Woodbury New Jersey 08096

(856) 848-7472

cwork@blumberglawoffices.com

/s/ Christopher M. Wolk

Christopher M. Wolk, Esq.

Attorneys for Premier Orthopaedic and Sports Medicine Associates of Southern New Jersey, LLC, trading as Premier Orthopaedic Associates, Premier Orthopaedic Associates Surgical Center, LLC, Kimberly Yvette Smith, M.D., a/k/a Kimberly Yvette Smith-Martin, M.D., Thomas Dwyer, M.D., Richard C. DiVerniero, M.D., and Richard Strauss, M.D.

**CERTIFICATION**

I certify that in submitting this *DEPOSITION BY WRITTEN QUESTIONS*, I caused a copy of the above to be filed electronically via the Court's electronic filing system. Those attorneys who are registered with the Court's electronic filing system may access these filings through the Court's System, and notice of these filings will be sent to these parties by operation of the Court's electronic filing system. A copy of the document will also be served by U.S. Mail and Hand Delivery to Vanderbilt Medical Group Clinic Pharmacy, 1211 Medical Center Drive, TVC 1815, Nashville, TN 37232

Dated: October 12, 2015

/s/ Christopher M. Wolk  
Christopher M. Wolk, Esq.

# EXHIBIT 7

NOTICE OF DEPOSITION BY WRITTEN  
QUESTIONS TO SUMMIT SURGERY  
CENTER

**Blumberg & Wolk, LLC**

158 Delaware Street  
P.O. Box 68  
Woodbury, NJ 08096  
(856) 848-7472

*Counsel for Defendants Premier Orthopaedic and Sports Medicine Associates of Southern New Jersey, LLC, trading as Premier Orthopaedic Associates, Premier Orthopaedic Associates Surgical Center, LLC, Kimberly Yvette Smith, M.D., a/k/a Kimberly Yvette Smith-Martin, M.D., Thomas Dwyer, M.D., Rhaul Shah, M.D., John Catalano, M.D., Richard C. DiVerniero, M.D., and Richard Strauss, M.D.*

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

IN RE: NEW ENGLAND COMPOUNDING  
PHARMACY, INC. PRODUCTS LIABILITY  
LITIGATION

THIS DOCUMENT RELATES TO:

ALL CASES

MDL No. 2419

Docket No. 1:13-md-2419 (RWZ)

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**NOTICE OF 30(B)(6) DEPOSITION BY WRITTEN QUESTIONS**

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Defendants Premier Orthopedic and Sports Medicine Associates of Southern New Jersey, LLC, trading as Premier Orthopedic Associates, Premier Orthopedic Associates Surgical Center, LLC, Kimberly Yvette Smith-Martin, M.D., Thomas Dwyer, M.D., Rahul Shah, M.D., Dr. Richard C. DiVerniero, M.D. (Hereinafter “The Premier Defendants” or “Premier”), pursuant to Fed. R. Civ. P. 31 and 30(b)(6), come now and give notice that the deposition of Summit Surgery Center, as an organization, will be taken by written questions.

Pursuant to Fed. R. Civ. P. 30(b)(6) and 31(a)(4), Summit Surgery Center shall designate a witness to testify regarding the written questions included with this notice, and any cross questions, redirect questions, or recross questions submitted in accordance with Fed. R. Civ. P. 31(a)(5).

The deponent will testify before a court reporter from Discovery Litigation Services at a time and place convenient for the witness but not to occur less than 30 days after service of this notice and the accompanying questions (to permit parties time to submit cross, redirect, and recross questions), or after November 15, 2015. The deposition will be recorded by stenographical means.

Respectfully submitted,

**Blumberg & Wolk, LLC**  
158 Delaware Street  
P.O. Box 68  
Woodbury New Jersey 08096  
(856) 848-7472  
cwalk@blumberglawoffices.com

/s/ Christopher M. Wolk  
Christopher M. Wolk, Esq.

Attorneys for Premier Orthopaedic and Sports  
Medicine Associates of Southern New Jersey, LLC,  
trading as Premier Orthopaedic Associates, Premier  
Orthopaedic Associates Surgical Center, LLC,  
Kimberly Yvette Smith, M.D., a/k/a Kimberly  
Yvette Smith-Martin, M.D., Thomas Dwyer, M.D.,  
Richard C. DiVerniero, M.D., and Richard Strauss,  
M.D.

**CERTIFICATION**

I certify that in submitting this *NOTICE OF DEPOSITION BY WRITTEN QUESTIONS*, I caused a copy of the above to be filed electronically via the Court's electronic filing system. Those attorneys who are registered with the Court's electronic filing system may access these filings through the Court's System, and notice of these filings will be sent to these parties by operation of the Court's electronic filing system. A copy of the document will also be served by U.S. Mail and Hand Delivery to Summit Surgery Center, 3901 Central Pike, Suite 152, Hermitage, TN 37076

Dated: October 12, 2015

/s/ Christopher M. Wolk  
Christopher M. Wolk, Esq.



AO 88A (Rev. 02/14) Subpoena to Testify at a Deposition in a Civil Action

## UNITED STATES DISTRICT COURT

for the

District of Massachusetts

In Re: New England Compounding Pharmacy, Inc.

*Plaintiff*

v.

*Defendant*

Civil Action No. 1:13-md-02419-RWZ

## SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To:

Summit Surgery Center

*(Name of person to whom this subpoena is directed)*

☒ **Testimony:** **YOU ARE COMMANDED** to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Place: 3901 Central Pike, Suite 152  
Hermitage, TN 37076

Date and Time:

11/15/2015 8:00 am

The deposition will be recorded by this method: Stenographical means and by video

☐ **Production:** You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 10/12/2015

CLERK OF COURT

OR

*Signature of Clerk or Deputy Clerk**Attorney's Signature*

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Premier  
Defendants

\_\_\_\_\_, who issues or requests this subpoena, are:  
Christopher Wolk; 158 Delaware St., P.O. Box 68, Woodbury, NJ 08096; cwoik@blumberglawoffices.com; (856) 848-7472

## Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

AO 88A (Rev. 02/14) Subpoena to Testify at a Deposition in a Civil Action (Page 2)

Civil Action No. 1:13-md-02419-RWZ

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

I received this subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
on *(date)* \_\_\_\_\_.

☐ I served the subpoena by delivering a copy to the named individual as follows: \_\_\_\_\_

\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the subpoena unexecuted because: \_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of  
\$ 40.00 .

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc.:

**Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)****(c) Place of Compliance.**

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
  - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

**(d) Protecting a Person Subject to a Subpoena; Enforcement.**

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
  - (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
  - (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
  - (iv) subjects a person to undue burden.
- (B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

**(e) Duties in Responding to a Subpoena.**

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

**(2) Claiming Privilege or Protection.**

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(g) Contempt.**

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

**Blumberg & Wolk, LLC**  
158 Delaware Street  
P.O. Box 68  
Woodbury, NJ 08096  
(856) 848-7472

*Counsel for Defendants Premier Orthopaedic and Sports Medicine Associates of Southern New Jersey, LLC, trading as Premier Orthopaedic Associates, Premier Orthopaedic Associates Surgical Center, LLC, Kimberly Yvette Smith, M.D., a/k/a Kimberly Yvette Smith-Martin, M.D., Thomas Dwyer, M.D., Rahul Shah, M.D., John Catalano, M.D., Richard C. DiVerniero, M.D., and Richard Strauss, M.D.*

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

IN RE: NEW ENGLAND COMPOUNDING  
PHARMACY, INC. PRODUCTS LIABILITY  
LITIGATION

THIS DOCUMENT RELATES TO:  
  
ALL CASES

MDL No. 2419  
Docket No. 1:13-md-2419 (RWZ)

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**DEPOSITION BY WRITTEN QUESTIONS OF SUMMIT SURGERY CENTER**

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Pursuant to Fed. R. Civ. P. 31, Premier Orthopedic Associates, Premier Orthopedic Associates Surgical Center, LLC, Kimberly Yvette Smith-Martin, M.D., Thomas Dwyer, M.D., Rahul Shah, M.D., Dr. Richard C. DiVerniero, M.D., (hereinafter “The Premier Defendants” or “Premier”) hereby submit the following questions to Summit Surgery Center, to be answered by one or more individuals with knowledge of Summit Surgery Center medication purchasing practices (and, specifically, its purchases from New England Compounding Center (“NECC”)), to be designated by Summit Surgery Center in accordance with Fed. R. Civ. P. 30(b)(6).

**Background**

1. Please state your name.
2. Please provide your complete address and phone number with area code.
3. Do you work at Summit Surgery Center? If so<sup>1</sup>:
  - a. What is your current position?
  - b. How long have you held that position?
  - c. Please describe your job duties at Summit Surgery Center.
4. Please provide a brief summary of your educational and employment background, leading up to your present position at Summit Surgery Center.
5. Please provide a general description of your facility (*e.g.*, type of practice, number of physicians, *etc.*).
6. By virtue of your role at Summit Surgery Center, are you familiar with Summit Surgery Center's medication purchasing practices?
7. Please describe the basis for your familiarity with Summit Surgery Center's medication purchasing practices (*e.g.*, is it from personal knowledge? have you spoken with persons at Summit Surgery Center or reviewed documents?).

**Purchases from NECC and actions prior to purchase**

8. For the years 2010 through 2012, did Summit Surgery Center purchase medications offered for sale by Medical Sales Management and/or New England Compounding Center and made by the New England Compounding Center (hereinafter "NECC")?
9. Please describe the timeframes that Summit Surgery Center purchased medications from NECC and what medications were purchased.
10. Prior to purchasing medications from NECC, did a representative of Summit Surgery Center perform an in-person inspection of NECC's compounding facility? If so, please (1) state when, (2) describe what was done and what was found, and (3) state whether, following the inspection, Summit Surgery Center purchased medications from NECC.

---

<sup>1</sup> If not, please state your employer, position, and job duties.

11. Prior to purchasing medications from NECC, did Summit Surgery Center conduct research into whether NECC had recalled any medications made by NECC? If so, please (1) describe the research conducted, (2) describe the results, and (3) state whether, following the drug recall research, Summit Surgery Center purchased medications from NECC.
12. Prior to purchasing medications from NECC, did Summit Surgery Center conduct research into whether NECC had ever been named as a defendant in a products liability lawsuit? If so, please (1) describe the research conducted, (2) describe the results, and (3) state whether, following the previous lawsuit research, Summit Surgery Center purchased medications from NECC.
13. Prior to purchasing medications from NECC, did Summit Surgery Center request information from the Massachusetts Board of Registration in Pharmacy (the "Board") about previous disciplinary actions taken by the Board against NECC? If so, please (1) describe what information was provided by the Massachusetts Board of Registration in Pharmacy and (2) state whether, following the request, Summit Surgery Center purchased medications from NECC.
14. Prior to purchasing medications from NECC, did Summit Surgery Center submit a Freedom of Information Act request to the FDA for documentation of disciplinary actions and/or warnings issued to NECC by the FDA? If so, please (1) describe what information was provided by the FDA and (2) state whether, following the request, Summit Surgery Center purchased medications from NECC.
15. Prior to purchasing medications from NECC, did Summit Surgery Center search the FDA website for information about NECC? If so, please (1) describe what information was obtained from the FDA website and (2) state whether, following the request, Summit Surgery Center purchased medications from NECC.
16. Prior to purchasing medications from NECC, did Summit Surgery Center review transcripts from or summaries of any U.S. Congressional hearings on compounding pharmacies? If so, following the review, did Summit Surgery Center purchase medications from NECC?
17. At the time of Summit Surgery Center's purchases from NECC, did Summit Surgery Center have a policy and/or procedure in place prohibiting purchases from compounding pharmacies?
18. Please describe any representations Medical Sales Management and/or NECC made to Summit Surgery Center prior to Summit Surgery Center purchasing medications from NECC.

19. In deciding to purchase medications from NECC, did Summit Surgery Center take into consideration any representations from Medical Sales Management and/or NECC regarding its ability to provide a consistent supply of safe medications?
20. Prior to purchasing from NECC, did Summit Surgery Center research compounding pharmacies in CDC literature, *USA Today*, FDA literature, or on YouTube? If so, please (1) describe the research and (2) state whether, following the research, Summit Surgery Center purchased medications from NECC.
21. To the best of your knowledge, did any of Summit Surgery Center's patients experience an injury as a result of Summit Surgery Center's purchase, and use, of medications from NECC which were administered to Summit Surgery Center's patients?

Respectfully submitted,

**Blumberg & Wolk, LLC**  
158 Delaware Street  
P.O. Box 68  
Woodbury New Jersey 08096  
(856) 848-7472  
cwolk@blumberglawoffices.com

/s/ Christopher M. Wolk  
Christopher M. Wolk, Esq.

Attorneys for Premier Orthopaedic and Sports  
Medicine Associates of Southern New Jersey, LLC,  
trading as Premier Orthopaedic Associates, Premier  
Orthopaedic Associates Surgical Center, LLC,  
Kimberly Yvette Smith, M.D., a/k/a Kimberly  
Yvette Smith-Martin, M.D., Thomas Dwyer, M.D.,  
Richard C. DiVerniero, M.D., and Richard Strauss,  
M.D.

**CERTIFICATION**

I certify that in submitting this *DEPOSITION BY WRITTEN QUESTIONS*, I caused a copy of the above to be filed electronically via the Court's electronic filing system. Those attorneys who are registered with the Court's electronic filing system may access these filings through the Court's System, and notice of these filings will be sent to these parties by operation of the Court's electronic filing system. A copy of the document will also be served by U.S. Mail and Hand Delivery to Summit Surgery Center, 3901 Central Pike, Suite 152, Hermitage, TN 37076

Dated: October 12, 2015

/s/ Christopher M. Wolk  
Christopher M. Wolk, Esq.



# EXHIBIT 8

NOTICE OF DEPOSITION BY WRITTEN  
QUESTIONS TO UCSF MEDICAL  
CENTER

**Blumberg & Wolk, LLC**

158 Delaware Street

P.O. Box 68

Woodbury, NJ 08096

(856) 848-7472

*Counsel for Defendants Premier Orthopaedic and Sports Medicine Associates of Southern New Jersey, LLC, trading as Premier Orthopaedic Associates, Premier Orthopaedic Associates Surgical Center, LLC, Kimberly Yvette Smith, M.D., a/k/a Kimberly Yvette Smith-Martin, M.D., Thomas Dwyer, M.D., Rhaul Shah, M.D., John Catalano, M.D., Richard C. DiVerniero, M.D., and Richard Strauss, M.D.*

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

IN RE: NEW ENGLAND COMPOUNDING  
PHARMACY, INC. PRODUCTS LIABILITY  
LITIGATION

THIS DOCUMENT RELATES TO:

ALL CASES

MDL No. 2419

Docket No. 1:13-md-2419 (RWZ)

---

**NOTICE OF 30(B)(6) DEPOSITION BY WRITTEN QUESTIONS**

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Defendants Premier Orthopedic and Sports Medicine Associates of Southern New Jersey, LLC, trading as Premier Orthopedic Associates, Premier Orthopedic Associates Surgical Center, LLC, Kimberly Yvette Smith-Martin, M.D., Thomas Dwyer, M.D., Rahul Shah, M.D., Dr. Richard C. DiVerniero, M.D. (Hereinafter "The Premier Defendants" or "Premier"), pursuant to Fed. R. Civ. P. 31 and 30(b)(6), come now and give notice that the deposition of UCSF Medical Center, as an organization, will be taken by written questions.

Pursuant to Fed. R. Civ. P. 30(b)(6) and 31(a)(4), UCSF Medical Center shall designate a witness to testify regarding the written questions included with this notice, and any cross questions, redirect questions, or recross questions submitted in accordance with Fed. R. Civ. P. 31(a)(5).

The deponent will testify before a court reporter from Discovery Litigation Services at a time and place convenient for the witness but not to occur less than 30 days after service of this notice and the accompanying questions (to permit parties time to submit cross, redirect, and recross questions), or after November 15, 2015. The deposition will be recorded by stenographical means.

Respectfully submitted,

**Blumberg & Wolk, LLC**  
158 Delaware Street  
P.O. Box 68  
Woodbury New Jersey 08096  
(856) 848-7472  
cwalk@blumberglawoffices.com

/s/ Christopher M. Wolk  
Christopher M. Wolk, Esq.

Attorneys for Premier Orthopaedic and Sports Medicine Associates of Southern New Jersey, LLC, trading as Premier Orthopaedic Associates, Premier Orthopaedic Associates Surgical Center, LLC, Kimberly Yvette Smith, M.D., a/k/a Kimberly Yvette Smith-Martin, M.D., Thomas Dwyer, M.D., Richard C. DiVerniero, M.D., and Richard Strauss, M.D.

**CERTIFICATION**

I certify that in submitting this *NOTICE OF DEPOSITION BY WRITTEN QUESTIONS*, I caused a copy of the above to be filed electronically via the Court's electronic filing system. Those attorneys who are registered with the Court's electronic filing system may access these filings through the Court's System, and notice of these filings will be sent to these parties by operation of the Court's electronic filing system. A copy of the document will also be served by U.S. Mail and Hand Delivery to UCSF Medical Center, 350 Parnassus Avenue, Suite 507, San Francisco, CA 94143

Dated: October 14, 2015

/s/ Christopher M. Wolk  
Christopher M. Wolk, Esq.

AO 88A (Rev. 02/14) Subpoena to Testify at a Deposition in a Civil Action

## UNITED STATES DISTRICT COURT

for the

District of Massachusetts

In Re: New England Compounding Pharmacy, Inc.

*Plaintiff*

v.

*Defendant*

Civil Action No. 1:13-md-02419-RWZ

## SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To:

UCSF Medical Center

(Name of person to whom this subpoena is directed)

☒ **Testimony:** **YOU ARE COMMANDED** to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Place: 350 Parnassus Avenue, Suite 507  
San Francisco, CA 94143

Date and Time:

11/15/2015 8:00 am

The deposition will be recorded by this method: Stenographical means and by video

☐ **Production:** You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(c) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 10/14/2015

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Premier  
Defendants

, who issues or requests this subpoena, are:  
Christopher Wolk; 158 Delaware St., P.O. Box 68, Woodbury, NJ 08096; cwolk@blumberglawoffices.com; (856) 848-7472

**Notice to the person who issues or requests this subpoena**

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

AO 88A (Rev. 02/14) Subpoena to Testify at a Deposition in a Civil Action (Page 2)

Civil Action No. 1:13-md-02419-RWZ

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

I received this subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
on *(date)* \_\_\_\_\_.

☐ I served the subpoena by delivering a copy to the named individual as follows: \_\_\_\_\_

\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the subpoena unexecuted because: \_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of

\$ 40.00 .

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_  
\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc.:

**Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)****(c) Place of Compliance.**

**(1) For a Trial, Hearing, or Deposition.** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
  - (ii) is commanded to attend a trial and would not incur substantial expense.

**(2) For Other Discovery.** A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

**(d) Protecting a Person Subject to a Subpoena; Enforcement.**

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

**(A) Appearance Not Required.** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

**(B) Objections.** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

**(A) When Required.** On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
  - (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
  - (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
  - (iv) subjects a person to undue burden.
- (B) When Permitted.** To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

**(C) Specifying Conditions as an Alternative.** In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

**(e) Duties in Responding to a Subpoena.**

**(1) Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

**(A) Documents.** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

**(B) Form for Producing Electronically Stored Information Not Specified.** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

**(C) Electronically Stored Information Produced in Only One Form.** The person responding need not produce the same electronically stored information in more than one form.

**(D) Inaccessible Electronically Stored Information.** The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

**(2) Claiming Privilege or Protection.**

**(A) Information Withheld.** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

**(B) Information Produced.** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(g) Contempt.**

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

**Blumberg & Wolk, LLC**

158 Delaware Street  
P.O. Box 68  
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(856) 848-7472

*Counsel for Defendants Premier Orthopaedic and Sports Medicine Associates of Southern New Jersey, LLC, trading as Premier Orthopaedic Associates, Premier Orthopaedic Associates Surgical Center, LLC, Kimberly Yvette Smith, M.D., a/k/a Kimberly Yvette Smith-Martin, M.D., Thomas Dwyer, M.D., Rahul Shah, M.D., John Catalano, M.D., Richard C. DiVerniero, M.D., and Richard Strauss, M.D.*

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

IN RE: NEW ENGLAND COMPOUNDING  
PHARMACY, INC. PRODUCTS LIABILITY  
LITIGATION

THIS DOCUMENT RELATES TO:

ALL CASES

MDL No. 2419

Docket No. 1:13-md-2419 (RWZ)

---

**DEPOSITION BY WRITTEN QUESTIONS OF UCSF MEDICAL CENTER**

---

Pursuant to Fed. R. Civ. P. 31, Premier Orthopedic Associates, Premier Orthopedic Associates Surgical Center, LLC, Kimberly Yvette Smith-Martin, M.D., Thomas Dwyer, M.D., Rahul Shah, M.D., Dr. Richard C. DiVerniero, M.D., (hereinafter “The Premier Defendants” or “Premier”) hereby submit the following questions to UCSF Medical Center, to be answered by one or more individuals with knowledge of UCSF Medical Center medication purchasing practices (and, specifically, its purchases from New England Compounding Center (“NECC”)), to be designated by UCSF Medical Center in accordance with Fed. R. Civ. P. 30(b)(6).



**Background**

1. Please state your name.
2. Please provide your complete address and phone number with area code.
3. Do you work at UCSF Medical Center? If so<sup>1</sup>:
  - a. What is your current position?
  - b. How long have you held that position?
  - c. Please describe your job duties at UCSF Medical Center.
4. Please provide a brief summary of your educational and employment background, leading up to your present position at UCSF Medical Center.
5. Please provide a general description of your facility (*e.g.*, type of practice, number of physicians, *etc.*).
6. By virtue of your role at UCSF Medical Center, are you familiar with UCSF Medical Center's medication purchasing practices?
7. Please describe the basis for your familiarity with UCSF Medical Center's medication purchasing practices (*e.g.*, is it from personal knowledge? have you spoken with persons at UCSF Medical Center or reviewed documents?).

**Purchases from NECC and actions prior to purchase**

8. For the years 2010 through 2012, did UCSF Medical Center purchase medications offered for sale by Medical Sales Management and/or New England Compounding Center and made by the New England Compounding Center (hereinafter "NECC")?
9. Please describe the timeframes that UCSF Medical Center purchased medications from NECC and what medications were purchased.
10. Prior to purchasing medications from NECC, did a representative of UCSF Medical Center perform an in-person inspection of NECC's compounding facility? If so, please (1) state when, (2) describe what was done and what was found, and (3) state whether, following the inspection, UCSF Medical Center purchased medications from NECC.

---

<sup>1</sup> If not, please state your employer, position, and job duties.

11. Prior to purchasing medications from NECC, did UCSF Medical Center conduct research into whether NECC had recalled any medications made by NECC? If so, please (1) describe the research conducted, (2) describe the results, and (3) state whether, following the drug recall research, UCSF Medical Center purchased medications from NECC.
12. Prior to purchasing medications from NECC, did UCSF Medical Center conduct research into whether NECC had ever been named as a defendant in a products liability lawsuit? If so, please (1) describe the research conducted, (2) describe the results, and (3) state whether, following the previous lawsuit research, UCSF Medical Center purchased medications from NECC.
13. Prior to purchasing medications from NECC, did UCSF Medical Center request information from the Massachusetts Board of Registration in Pharmacy (the "Board") about previous disciplinary actions taken by the Board against NECC? If so, please (1) describe what information was provided by the Massachusetts Board of Registration in Pharmacy and (2) state whether, following the request, UCSF Medical Center purchased medications from NECC.
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17. At the time of UCSF Medical Center's purchases from NECC, did UCSF Medical Center have a policy and/or procedure in place prohibiting purchases from compounding pharmacies?
18. Please describe any representations Medical Sales Management and/or NECC made to UCSF Medical Center prior to UCSF Medical Center purchasing medications from NECC.

19. In deciding to purchase medications from NECC, did UCSF Medical Center take into consideration any representations from Medical Sales Management and/or NECC regarding its ability to provide a consistent supply of safe medications?
20. Prior to purchasing from NECC, did UCSF Medical Center research compounding pharmacies in CDC literature, *USA Today*, FDA literature, or on YouTube? If so, please (1) describe the research and (2) state whether, following the research, UCSF Medical Center purchased medications from NECC.
21. To the best of your knowledge, did any of UCSF Medical Center's patients experience an injury as a result of UCSF Medical Center's purchase, and use, of medications from NECC which were administered to UCSF Medical Center's patients?

Respectfully submitted,

**Blumberg & Wolk, LLC**

158 Delaware Street

P.O. Box 68

Woodbury New Jersey 08096

(856) 848-7472

cwalk@blumberglawoffices.com

/s/ Christopher M. Wolk

Christopher M. Wolk, Esq.

Attorneys for Premier Orthopaedic and Sports  
Medicine Associates of Southern New Jersey, LLC,  
trading as Premier Orthopaedic Associates, Premier  
Orthopaedic Associates Surgical Center, LLC,  
Kimberly Yvette Smith, M.D., a/k/a Kimberly  
Yvette Smith-Martin, M.D., Thomas Dwyer, M.D.,  
Richard C. DiVerniero, M.D., and Richard Strauss,  
M.D.

**CERTIFICATION**

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Dated: October 14, 2015

/s/ Christopher M. Wolk  
Christopher M. Wolk, Esq.

# EXHIBIT 9

NOTICE OF DEPOSITION BY WRITTEN  
QUESTIONS TO THE EMORY CLINIC  
AMBULATORY SURGERY CENTER

**Blumberg & Wolk, LLC**

158 Delaware Street  
P.O. Box 68  
Woodbury, NJ 08096  
(856) 848-7472

*Counsel for Defendants Premier Orthopaedic and Sports Medicine Associates of Southern New Jersey, LLC, trading as Premier Orthopaedic Associates, Premier Orthopaedic Associates Surgical Center, LLC, Kimberly Yvette Smith, M.D., a/k/a Kimberly Yvette Smith-Martin, M.D., Thomas Dwyer, M.D., Rhaul Shah, M.D., John Catalano, M.D., Richard C. DiVerniero, M.D., and Richard Strauss, M.D.*

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

IN RE: NEW ENGLAND COMPOUNDING  
PHARMACY, INC. PRODUCTS LIABILITY  
LITIGATION

THIS DOCUMENT RELATES TO:

ALL CASES

MDL No. 2419

Docket No. 1:13-md-2419 (RWZ)

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**NOTICE OF 30(B)(6) DEPOSITION BY WRITTEN QUESTIONS**

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Defendants Premier Orthopedic and Sports Medicine Associates of Southern New Jersey, LLC, trading as Premier Orthopedic Associates, Premier Orthopedic Associates Surgical Center, LLC, Kimberly Yvette Smith-Martin, M.D., Thomas Dwyer, M.D., Rahul Shah, M.D., Dr. Richard C. DiVerniero, M.D. (Hereinafter "The Premier Defendants" or "Premier"), pursuant to Fed. R. Civ. P. 31 and 30(b)(6), come now and give notice that the deposition of The Emory Clinic Ambulatory Surgery Center, as an organization, will be taken by written questions.

Pursuant to Fed. R. Civ. P. 30(b)(6) and 31(a)(4), The Emory Clinic Ambulatory Surgery Center shall designate a witness to testify regarding the written questions included with this notice, and any cross questions, redirect questions, or recross questions submitted in accordance with Fed. R. Civ. P. 31(a)(5).

The deponent will testify before a court reporter from Discovery Litigation Services at a time and place convenient for the witness but not to occur less than 30 days after service of this notice and the accompanying questions (to permit parties time to submit cross, redirect, and recross questions), or after November 15, 2015. The deposition will be recorded by stenographical means.

Respectfully submitted,

**Blumberg & Wolk, LLC**  
158 Delaware Street  
P.O. Box 68  
Woodbury New Jersey 08096  
(856) 848-7472  
cwalk@blumberglawoffices.com

/s/ Christopher M. Wolk  
Christopher M. Wolk, Esq.

Attorneys for Premier Orthopaedic and Sports Medicine Associates of Southern New Jersey, LLC, trading as Premier Orthopaedic Associates, Premier Orthopaedic Associates Surgical Center, LLC, Kimberly Yvette Smith, M.D., a/k/a Kimberly Yvette Smith-Martin, M.D., Thomas Dwyer, M.D., Richard C. DiVerniero, M.D., and Richard Strauss, M.D.

**CERTIFICATION**

I certify that in submitting this *NOTICE OF DEPOSITION BY WRITTEN QUESTIONS*, I caused a copy of the above to be filed electronically via the Court's electronic filing system. Those attorneys who are registered with the Court's electronic filing system may access these filings through the Court's System, and notice of these filings will be sent to these parties by operation of the Court's electronic filing system. A copy of the document will also be served by U.S. Mail and Hand Delivery to The Emory Clinic Ambulatory Surgery Center, 1365 Clifton Road Northeast, Atlanta, GA 30322

Dated: October 12, 2015

/s/ Christopher M. Wolk  
Christopher M. Wolk, Esq.



AO 88A (Rev. 02/14) Subpoena to Testify at a Deposition in a Civil Action

## UNITED STATES DISTRICT COURT

for the  
District of Massachusetts

In Re: New England Compounding Pharmacy, Inc.

*Plaintiff*

v.

*Defendant*

Civil Action No. 1:13-md-02419-RWZ

## SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: The Emory Clinic Ambulatory Surgery Center

(Name of person to whom this subpoena is directed)

☒ **Testimony:** **YOU ARE COMMANDED** to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Place: 1365 Clifton Road Northeast  
Atlanta, GA 30322

Date and Time:

11/15/2015 8:00 am

The deposition will be recorded by this method: Stenographical means and by video

☐ **Production:** You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 10/12/2015

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney Signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Premier Defendants

, who issues or requests this subpoena, are:  
Christopher Wolk; 158 Delaware St., P.O. Box 68, Woodbury, NJ 08096; cwoik@blumberglawoffices.com; (856) 848-7472

## Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

AO 88A (Rev. 02/14) Subpoena to Testify at a Deposition in a Civil Action (Page 2)

Civil Action No. 1:13-md-02419-RWZ

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

I received this subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
on *(date)* \_\_\_\_\_.

☒ I served the subpoena by delivering a copy to the named individual as follows: \_\_\_\_\_

\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the subpoena unexecuted because: \_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of  
\$ 40.00 .

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_  
\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc.:

**Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)****(c) Place of Compliance.**

**(1) For a Trial, Hearing, or Deposition.** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
  - (ii) is commanded to attend a trial and would not incur substantial expense.

**(2) For Other Discovery.** A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

**(d) Protecting a Person Subject to a Subpoena; Enforcement.**

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

**(e) Duties in Responding to a Subpoena.**

**(1) Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

**(2) Claiming Privilege or Protection.**

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(g) Contempt.**

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

**Blumberg & Wolk, LLC**

158 Delaware Street  
P.O. Box 68  
Woodbury, NJ 08096  
(856) 848-7472

*Counsel for Defendants Premier Orthopaedic and Sports Medicine Associates of Southern New Jersey, LLC, trading as Premier Orthopaedic Associates, Premier Orthopaedic Associates Surgical Center, LLC, Kimberly Yvette Smith, M.D., a/k/a Kimberly Yvette Smith-Martin, M.D., Thomas Dwyer, M.D., Rahul Shah, M.D., John Catalano, M.D., Richard C. DiVerniero, M.D., and Richard Strauss, M.D.*

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

IN RE: NEW ENGLAND COMPOUNDING  
PHARMACY, INC. PRODUCTS LIABILITY  
LITIGATION

THIS DOCUMENT RELATES TO:

ALL CASES

MDL No. 2419

Docket No. 1:13-md-2419 (RWZ)

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**DEPOSITION BY WRITTEN QUESTIONS OF THE EMORY CLINIC AMBULATORY  
SURGERY CENTER**

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Pursuant to Fed. R. Civ. P. 31, Premier Orthopedic Associates, Premier Orthopedic Associates Surgical Center, LLC, Kimberly Yvette Smith-Martin, M.D., Thomas Dwyer, M.D., Rahul Shah, M.D., Dr. Richard C. DiVerniero, M.D., (hereinafter “The Premier Defendants” or “Premier”) hereby submit the following questions to The Emory Clinic Ambulatory Surgery Center, to be answered by one or more individuals with knowledge of The Emory Clinic Ambulatory Surgery Center’s medication purchasing practices (and, specifically, its purchases from New England Compounding Center (“NECC”)), to be designated by The Emory Clinic Ambulatory Surgery Center in accordance with Fed. R. Civ. P. 30(b)(6).

**Background**

1. Please state your name.
2. Please provide your complete address and phone number with area code.
3. Do you work at The Emory Clinic Ambulatory Surgery Center? If so<sup>1</sup>:
  - a. What is your current position?
  - b. How long have you held that position?
  - c. Please describe your job duties at The Emory Clinic Ambulatory Surgery Center.
4. Please provide a brief summary of your educational and employment background, leading up to your present position at The Emory Clinic Ambulatory Surgery Center.
5. Please provide a general description of your facility (*e.g.*, type of practice, number of physicians, *etc.*).
6. By virtue of your role at The Emory Clinic Ambulatory Surgery Center, are you familiar with The Emory Clinic Ambulatory Surgery Center's medication purchasing practices?
7. Please describe the basis for your familiarity with The Emory Clinic Ambulatory Surgery Center's medication purchasing practices (*e.g.*, is it from personal knowledge? have you spoken with persons at The Emory Clinic Ambulatory Surgery Center or reviewed documents?).

**Purchases from NECC and actions prior to purchase**

8. For the years 2010 through 2012, did The Emory Clinic Ambulatory Surgery Center purchase medications offered for sale by Medical Sales Management and/or New England Compounding Center and made by the New England Compounding Center (hereinafter "NECC")?
9. Please describe the timeframes that The Emory Clinic Ambulatory Surgery Center purchased medications from NECC and what medications were purchased.
10. Prior to purchasing medications from NECC, did a representative of The Emory Clinic Ambulatory Surgery Center perform an in-person inspection of NECC's compounding facility? If so, please (1) state when, (2) describe what was done and what was found, and (3) state whether, following the inspection, The Emory Clinic Ambulatory Surgery Center purchased medications from NECC.

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<sup>1</sup> If not, please state your employer, position, and job duties.

11. Prior to purchasing medications from NECC, did The Emory Clinic Ambulatory Surgery Center conduct research into whether NECC had recalled any medications made by NECC? If so, please (1) describe the research conducted, (2) describe the results, and (3) state whether, following the drug recall research, The Emory Clinic Ambulatory Surgery Center purchased medications from NECC.
12. Prior to purchasing medications from NECC, did The Emory Clinic Ambulatory Surgery Center conduct research into whether NECC had ever been named as a defendant in a products liability lawsuit? If so, please (1) describe the research conducted, (2) describe the results, and (3) state whether, following the previous lawsuit research, The Emory Clinic Ambulatory Surgery Center purchased medications from NECC.
13. Prior to purchasing medications from NECC, did The Emory Clinic Ambulatory Surgery Center request information from the Massachusetts Board of Registration in Pharmacy (the "Board") about previous disciplinary actions taken by the Board against NECC? If so, please (1) describe what information was provided by the Massachusetts Board of Registration in Pharmacy and (2) state whether, following the request, The Emory Clinic Ambulatory Surgery Center purchased medications from NECC.
14. Prior to purchasing medications from NECC, did The Emory Clinic Ambulatory Surgery Center submit a Freedom of Information Act request to the FDA for documentation of disciplinary actions and/or warnings issued to NECC by the FDA? If so, please (1) describe what information was provided by the FDA and (2) state whether, following the request, The Emory Clinic Ambulatory Surgery Center purchased medications from NECC.
15. Prior to purchasing medications from NECC, did The Emory Clinic Ambulatory Surgery Center search the FDA website for information about NECC? If so, please (1) describe what information was obtained from the FDA website and (2) state whether, following the request, The Emory Clinic Ambulatory Surgery Center purchased medications from NECC.
16. Prior to purchasing medications from NECC, did The Emory Clinic Ambulatory Surgery Center review transcripts from or summaries of any U.S. Congressional hearings on compounding pharmacies? If so, following the review, did The Emory Clinic Ambulatory Surgery Center purchase medications from NECC?
17. At the time of The Emory Clinic Ambulatory Surgery Center's purchases from NECC, did The Emory Clinic Ambulatory Surgery Center have a policy and/or procedure in place prohibiting purchases from compounding pharmacies?

18. Please describe any representations Medical Sales Management and/or NECC made to The Emory Clinic Ambulatory Surgery Center prior to The Emory Clinic Ambulatory Surgery Center purchasing medications from NECC.
19. In deciding to purchase medications from NECC, did The Emory Clinic Ambulatory Surgery Center take into consideration any representations from Medical Sales Management and/or NECC regarding its ability to provide a consistent supply of safe medications?
20. Prior to purchasing from NECC, did The Emory Clinic Ambulatory Surgery Center research compounding pharmacies in CDC literature, *USA Today*, FDA literature, or on YouTube? If so, please (1) describe the research and (2) state whether, following the research, The Emory Clinic Ambulatory Surgery Center purchased medications from NECC.
21. To the best of your knowledge, did any of The Emory Clinic Ambulatory Surgery Center's patients experience an injury as a result of The Emory Clinic Ambulatory Surgery Center's purchase, and use, of medications from NECC which were administered to The Emory Clinic Ambulatory Surgery Center's patients?

Respectfully submitted,

**Blumberg & Wolk, LLC**

158 Delaware Street

P.O. Box 68

Woodbury New Jersey 08096

(856) 848-7472

cwalk@blumberglawoffices.com

/s/ Christopher M. Wolk

Christopher M. Wolk, Esq.

Attorneys for Premier Orthopaedic and Sports Medicine Associates of Southern New Jersey, LLC, trading as Premier Orthopaedic Associates, Premier Orthopaedic Associates Surgical Center, LLC, Kimberly Yvette Smith, M.D., a/k/a Kimberly Yvette Smith-Martin, M.D., Thomas Dwyer, M.D., Richard C. DiVerniero, M.D., and Richard Strauss, M.D.



**CERTIFICATION**

I certify that in submitting this *DEPOSITION BY WRITTEN QUESTIONS*, I caused a copy of the above to be filed electronically via the Court's electronic filing system. Those attorneys who are registered with the Court's electronic filing system may access these filings through the Court's System, and notice of these filings will be sent to these parties by operation of the Court's electronic filing system. A copy of the document will also be served by U.S. Mail and Hand Delivery to The Emory Clinic Ambulatory Surgery Center, 1365 Clifton Road Northeast, Atlanta, GA 30322

Dated: October 12, 2015

/s/ Christopher M. Wolk  
Christopher M. Wolk, Esq.



# EXHIBIT 10

NOTICE OF DEPOSITION BY WRITTEN  
QUESTIONS TO UNIVERSITY OF  
TENNESSEE MEDICAL CENTER

**Blumberg & Wolk, LLC**  
158 Delaware Street  
P.O. Box 68  
Woodbury, NJ 08096  
(856) 848-7472

*Counsel for Defendants Premier Orthopaedic and Sports Medicine Associates of Southern New Jersey, LLC, trading as Premier Orthopaedic Associates, Premier Orthopaedic Associates Surgical Center, LLC, Kimberly Yvette Smith, M.D., a/k/a Kimberly Yvette Smith-Martin, M.D., Thomas Dwyer, M.D., Rhaul Shah, M.D., John Catalano, M.D., Richard C. DiVerniero, M.D., and Richard Strauss, M.D.*

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

IN RE: NEW ENGLAND COMPOUNDING  
PHARMACY, INC. PRODUCTS LIABILITY  
LITIGATION

THIS DOCUMENT RELATES TO:  
  
ALL CASES

MDL No. 2419  
Docket No. 1:13-md-2419 (RWZ)

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**NOTICE OF 30(B)(6) DEPOSITION BY WRITTEN QUESTIONS**

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Defendants Premier Orthopedic and Sports Medicine Associates of Southern New Jersey, LLC, trading as Premier Orthopedic Associates, Premier Orthopedic Associates Surgical Center, LLC, Kimberly Yvette Smith-Martin, M.D., Thomas Dwyer, M.D., Rahul Shah, M.D., Dr. Richard C. DiVerniero, M.D. (Hereinafter "The Premier Defendants" or "Premier"), pursuant to Fed. R. Civ. P. 31 and 30(b)(6), come now and give notice that the deposition of University of Tennessee Medical Center, as an organization, will be taken by written questions.

Pursuant to Fed. R. Civ. P. 30(b)(6) and 31(a)(4), University of Tennessee Medical Center shall designate a witness to testify regarding the written questions included with this notice, and any cross questions, redirect questions, or recross questions submitted in accordance with Fed. R. Civ. P. 31(a)(5).

The deponent will testify before a court reporter from Discovery Litigation Services at a time and place convenient for the witness but not to occur less than 30 days after service of this notice and the accompanying questions (to permit parties time to submit cross, redirect, and recross questions), or after November 15, 2015. The deposition will be recorded by stenographical means.

Respectfully submitted,

**Blumberg & Wolk, LLC**

158 Delaware Street

P.O. Box 68

Woodbury New Jersey 08096

(856) 848-7472

cwalk@blumberglawoffices.com

/s/ Christopher M. Wolk

Christopher M. Wolk, Esq.

Attorneys for Premier Orthopaedic and Sports Medicine Associates of Southern New Jersey, LLC, trading as Premier Orthopaedic Associates, Premier Orthopaedic Associates Surgical Center, LLC, Kimberly Yvette Smith, M.D., a/k/a Kimberly Yvette Smith-Martin, M.D., Thomas Dwyer, M.D., Richard C. DiVerniero, M.D., and Richard Strauss, M.D.

**CERTIFICATION**

I certify that in submitting this *NOTICE OF DEPOSITION BY WRITTEN QUESTIONS*, I caused a copy of the above to be filed electronically via the Court's electronic filing system. Those attorneys who are registered with the Court's electronic filing system may access these filings through the Court's System, and notice of these filings will be sent to these parties by operation of the Court's electronic filing system. A copy of the document will also be served by U.S. Mail and Hand Delivery to University of Tennessee Medical Center, 1924 Alcoa Hwy., Knoxville, TN 37920

Dated: October 12, 2015

/s/ Christopher M. Wolk  
Christopher M. Wolk, Esq.

AO 88A (Rev. 02/14) Subpoena to Testify at a Deposition in a Civil Action

## UNITED STATES DISTRICT COURT

for the

District of Massachusetts

In Re: New England Compounding Pharmacy, Inc.

*Plaintiff*

v.

*Defendant*

Civil Action No. 1:13-md-02419-RWZ

## SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To:

University of Tennessee Medical Center

(Name of person to whom this subpoena is directed)

☒ **Testimony:** **YOU ARE COMMANDED** to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Place: 1924 Alcoa Hwy.  
Knoxville, TN 37920

Date and Time:

11/15/2015 8:00 am

The deposition will be recorded by this method: Stenographical means and by video

☐ **Production:** You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 10/12/2015

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Premier Defendants

, who issues or requests this subpoena, are:  
Christopher Wolk; 158 Delaware St., P.O. Box 68, Woodbury, NJ 08096; cwolk@blumberglawoffices.com; (856) 848-7472

## Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

AO 88A (Rev. 02/14) Subpoena to Testify at a Deposition in a Civil Action (Page 2)

Civil Action No. 1:13-md-02419-RWZ

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

I received this subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
on *(date)* \_\_\_\_\_.

☐ I served the subpoena by delivering a copy to the named individual as follows: \_\_\_\_\_

\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the subpoena unexecuted because: \_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of  
\$ 40.00 .

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_  
\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc.:

**Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)****(c) Place of Compliance.**

**(1) For a Trial, Hearing, or Deposition.** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
  - (ii) is commanded to attend a trial and would not incur substantial expense.

**(2) For Other Discovery.** A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

**(d) Protecting a Person Subject to a Subpoena; Enforcement.**

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
  - (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
  - (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
  - (iv) subjects a person to undue burden.
- (B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

**(e) Duties in Responding to a Subpoena.**

**(1) Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

**(2) Claiming Privilege or Protection.**

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(g) Contempt.**

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

**Blumberg & Wolk, LLC**

158 Delaware Street  
P.O. Box 68  
Woodbury, NJ 08096  
(856) 848-7472

*Counsel for Defendants Premier Orthopaedic and Sports Medicine Associates of Southern New Jersey, LLC, trading as Premier Orthopaedic Associates, Premier Orthopaedic Associates Surgical Center, LLC, Kimberly Yvette Smith, M.D., a/k/a Kimberly Yvette Smith-Martin, M.D., Thomas Dwyer, M.D., Rahul Shah, M.D., John Catalano, M.D., Richard C. DiVerniero, M.D., and Richard Strauss, M.D.*

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

IN RE: NEW ENGLAND COMPOUNDING  
PHARMACY, INC. PRODUCTS LIABILITY  
LITIGATION

THIS DOCUMENT RELATES TO:  
  
ALL CASES

MDL No. 2419  
Docket No. 1:13-md-2419 (RWZ)

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**DEPOSITION BY WRITTEN QUESTIONS OF UNIVERSITY OF TENNESSEE  
MEDICAL CENTER**

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Pursuant to Fed. R. Civ. P. 31, Premier Orthopedic Associates, Premier Orthopedic Associates Surgical Center, LLC, Kimberly Yvette Smith-Martin, M.D., Thomas Dwyer, M.D., Rahul Shah, M.D., Dr. Richard C. DiVerniero, M.D., (hereinafter “The Premier Defendants” or “Premier”) hereby submit the following questions to University of Tennessee Medical Center, to be answered by one or more individuals with knowledge of University of Tennessee Medical Center’s medication purchasing practices (and, specifically, its purchases from New England Compounding Center (“NECC”)), to be designated by University of Tennessee Medical Center in accordance with Fed. R. Civ. P. 30(b)(6).



**Background**

1. Please state your name.
2. Please provide your complete address and phone number with area code.
3. Do you work at University of Tennessee Medical Center? If so<sup>1</sup>:
  - a. What is your current position?
  - b. How long have you held that position?
  - c. Please describe your job duties at University of Tennessee Medical Center.
4. Please provide a brief summary of your educational and employment background, leading up to your present position at University of Tennessee Medical Center.
5. Please provide a general description of your facility (*e.g.*, type of practice, number of physicians, *etc.*).
6. By virtue of your role at University of Tennessee Medical Center, are you familiar with University of Tennessee Medical Center's medication purchasing practices?
7. Please describe the basis for your familiarity with University of Tennessee Medical Center's medication purchasing practices (*e.g.*, is it from personal knowledge? have you spoken with persons at University of Tennessee Medical Center or reviewed documents?).

**Purchases from NECC and actions prior to purchase**

8. For the years 2010 through 2012, did University of Tennessee Medical Center purchase medications offered for sale by Medical Sales Management and/or New England Compounding Center and made by the New England Compounding Center (hereinafter "NECC")?
9. Please describe the timeframes that University of Tennessee Medical Center purchased medications from NECC and what medications were purchased.
10. Prior to purchasing medications from NECC, did a representative of University of Tennessee Medical Center perform an in-person inspection of NECC's compounding facility? If so, please (1) state when, (2) describe what was done and what was found, and (3) state whether, following the inspection, University of Tennessee Medical Center purchased medications from NECC.

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<sup>1</sup> If not, please state your employer, position, and job duties.

11. Prior to purchasing medications from NECC, did University of Tennessee Medical Center conduct research into whether NECC had recalled any medications made by NECC? If so, please (1) describe the research conducted, (2) describe the results, and (3) state whether, following the drug recall research, University of Tennessee Medical Center purchased medications from NECC.
12. Prior to purchasing medications from NECC, did University of Tennessee Medical Center conduct research into whether NECC had ever been named as a defendant in a products liability lawsuit? If so, please (1) describe the research conducted, (2) describe the results, and (3) state whether, following the previous lawsuit research, University of Tennessee Medical Center purchased medications from NECC.
13. Prior to purchasing medications from NECC, did University of Tennessee Medical Center request information from the Massachusetts Board of Registration in Pharmacy (the "Board") about previous disciplinary actions taken by the Board against NECC? If so, please (1) describe what information was provided by the Massachusetts Board of Registration in Pharmacy and (2) state whether, following the request, University of Tennessee Medical Center purchased medications from NECC.
14. Prior to purchasing medications from NECC, did University of Tennessee Medical Center submit a Freedom of Information Act request to the FDA for documentation of disciplinary actions and/or warnings issued to NECC by the FDA? If so, please (1) describe what information was provided by the FDA and (2) state whether, following the request, University of Tennessee Medical Center purchased medications from NECC.
15. Prior to purchasing medications from NECC, did University of Tennessee Medical Center search the FDA website for information about NECC? If so, please (1) describe what information was obtained from the FDA website and (2) state whether, following the request, University of Tennessee Medical Center purchased medications from NECC.
16. Prior to purchasing medications from NECC, did University of Tennessee Medical Center review transcripts from or summaries of any U.S. Congressional hearings on compounding pharmacies? If so, following the review, did University of Tennessee Medical Center purchase medications from NECC?
17. At the time of University of Tennessee Medical Center's purchases from NECC, did University of Tennessee Medical Center have a policy and/or procedure in place prohibiting purchases from compounding pharmacies?
18. Please describe any representations Medical Sales Management and/or NECC made to University of Tennessee Medical Center prior to University of Tennessee Medical Center purchasing medications from NECC.

19. In deciding to purchase medications from NECC, did University of Tennessee Medical Center take into consideration any representations from Medical Sales Management and/or NECC regarding its ability to provide a consistent supply of safe medications?
20. Prior to purchasing from NECC, did University of Tennessee Medical Center research compounding pharmacies in CDC literature, *USA Today*, FDA literature, or on YouTube? If so, please (1) describe the research and (2) state whether, following the research, University of Tennessee Medical Center purchased medications from NECC.
21. To the best of your knowledge, did any of University of Tennessee Medical Center's patients experience an injury as a result of University of Tennessee Medical Center's purchase, and use, of medications from NECC which were administered to University of Tennessee Medical Center's patients?

Respectfully submitted,

**Blumberg & Wolk, LLC**

158 Delaware Street

P.O. Box 68

Woodbury New Jersey 08096

(856) 848-7472

cwork@blumberglawoffices.com

/s/ Christopher M. Wolk

Christopher M. Wolk, Esq.

Attorneys for Premier Orthopaedic and Sports Medicine Associates of Southern New Jersey, LLC, trading as Premier Orthopaedic Associates, Premier Orthopaedic Associates Surgical Center, LLC, Kimberly Yvette Smith, M.D., a/k/a Kimberly Yvette Smith-Martin, M.D., Thomas Dwyer, M.D., Richard C. DiVerniero, M.D., and Richard Strauss, M.D.

**CERTIFICATION**

I certify that in submitting this *DEPOSITION BY WRITTEN QUESTIONS*, I caused a copy of the above to be filed electronically via the Court's electronic filing system. Those attorneys who are registered with the Court's electronic filing system may access these filings through the Court's System, and notice of these filings will be sent to these parties by operation of the Court's electronic filing system. A copy of the document will also be served by U.S. Mail and Hand Delivery to University of Tennessee Medical Center, 1924 Alcoa Highway, Knoxville, TN 37920

Dated: October 12, 2015

/s/ Christopher M. Wolk  
Christopher M. Wolk, Esq.